

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DELPHIX CORP.,

Case No. C 13-4613 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR
LEAVE TO AMEND AND DENYING
MOTION TO DISMISS AS MOOT**

ACTIFO, INC.,

Defendant.

Plaintiff Delphix Corp. seeks leave to file a Second Amended Complaint, incorporating “additional factual averments to support its existing willful patent infringement and indirect infringement claims.” Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument and the hearing set for February 6, 2014 is hereby vacated. Defendant Actifo, Inc. does not oppose the motion *per se*, or offer any reason why leave to amend should not be granted under the liberal standard of Rule 15 of the Federal Rules of Civil Procedure. *See U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (“Rule 15’s policy of favoring amendments to pleadings should be applied with ‘extreme liberality.’”) (quoting *Rosenberg Brothers & Co. v. Arnold*, 283 F.2d 406).

1 Actifo refused to stipulate to the amendment, however, unless Delphix agreed that if a
2 motion to dismiss the Second Amended Complaint were successful, the ruling would be with
3 prejudice. Actifo's response to the motion for leave to amend consists primarily of arguments that
4 leave to file a *third* amended complaint should not be granted if the claims of the Second Amended
5 Complaint are dismissed. Actifo may make those arguments in any motion it brings to dismiss the
6 Second Amended Complaint. The motion for leave to amend is granted.

7 Without prejudice to Actifo's right to argue that the Second Amended Complaint does not
8 cure the alleged deficiencies set out in the pending motion to dismiss, that motion is denied as moot,
9 as is the parties' stipulated request for an extension of the briefing schedule.

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11 IT IS SO ORDERED.

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13 Dated: 1/15/14

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16 RICHARD SEEBORG
17 UNITED STATES DISTRICT JUDGE
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